IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 6270 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DEENABANDHU HARGOVANBHAI DAVE - Appellant(s)
Versus
SPL.LAQ OFFICER & 4 - Defendant(s)

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Appearance :

MR JITENDRA M PATEL for Appellant(s) : 1,
MR SATYAM CHHAYA, AGP for Defendant(s) : 1,
MR NIRAV C THAKKAR for Defendant(s) : 2,
MR SHITAL R PATEL for Defendant(s) : 3,
NOTICE SERVED for Defendant(s) : 4 - 5.

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 24/04/2007

ORAL JUDGMENT

1. The short facts of the case appears to be that

the land bearing Survey No.865 admeasuring 8086 sq. mtrs., was proposed to be acquired for educational public purpose for the North Gujarat University Campus. The possession of the land was taken over by applying emergency clause. The Special Land Acquisition Officer initiated the proceedings for acquisition of the land and the notification under Section 4 of the Act was published on 23.5.1987. The notification under Section 6 of the Act was published on 25.5.1988 and the award was passed on 21.9.1990 by the Special Land Acquisition Officer and he fixed the amount of compensation at Rs.56,402.70, but as there was dispute between the landlord and the tenant, he referred the matter under Section 30 of the Land Acquisition Act (hereinafter referred to as “the Act”) for apportionment of the amount of compensation amongst the interested persons, which was numbered as Land Acquisition Case No.1154/1990 before the Court of Assistant Judge, Mehsana. The Reference Court, after adjudication, found that the tenant has become deemed purchaser and, therefore, held

that the tenant would be entitled to the amount of compensation and it is under these circumstances, the present appeal before this Court.

2. Heard Mr.J.M.Patel, learned Counsel for the appellant, Mr.Parikh, learned Counsel for the Special Land Acquisition Officer – Respondent No.1 and Mr.Neerav Thakkar, learned Counsel for Respondent No.2. Considered the record and proceedings of the Reference Court.

3. It appears that as per the tenant, he was cultivating the land on the tiller's day and not only that, but as per the provisions of the Bombay Tenancy and Agricultural Lands Act (hereinafter referred to as “the Tenancy Act”) in the proceedings initiated under Section 32A of the Tenancy Act the competent Authority had declared that the tenant is entitled to purchase the land and the price was fixed at Rs.1,643/- and the said purchase price was to be paid by instalment vide order dated 11.3.1971. Therefore, Respondent No.2 had become entitled to purchase the land as the owner as per the

Scheme of the Tenancy Act read with the order of the competent Authority. However, it appears that the pending the said proceedings, respondent No.2 tenant had entered into an agreement to sale with third party, for which the proceedings were initiated for breach of the provisions of the Tenancy Act and ultimately vide order passed by the Tribunal the proceedings under Section 84C of the Act were restored, but the matter was remanded by giving opportunity to approach the Collector under Section 32R of the Tenancy Act, since the tenant himself did not cultivate the land. It appears that thereafter as per the decision dated 19.3.1993 passed by the Tribunal, the Tribunal condoned the alleged non-cultivation under Section 32R of the Act and consequently the status of the tenant over the land as that of the purchaser and owner by statutory fiction was restored.

4. It is not in dispute that the order dated 19.3.1993 of the Tribunal, whereby the breach was condoned against the tenant and the status

was restored, has become final and the landlord has not carried the matter before any higher forum.

5. Under the above circumstances, when the tenant had become owner by statutory fiction of purchase of the land as per the Scheme of the Act and the breach of non-cultivation was also condoned by the competent Authority under the Tenancy Act, former landlord had ceased to have any interest over the land. Under these circumstances, it cannot be said that any error is committed by the Reference Court in observing that the tenant would be entitled to the compensation as awarded by the Special Land Acquisition Officer.

6. Hence, the appeal fails. Therefore, the same is dismissed. The record and proceedings be returned to the Tribunal.

24.4.2007 **(Jayant Patel, J.)**

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